FARAD CONTINUTION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

A.O.No.232 of 2006

Office Notes,Office Memorandum of Coram appearence,Court's Orders & Directions and Registrar's Order	Court or Judge's Order

Mr.S.K Sthalekar for appellant
Mr Ruchir U Dholakia for Respondent nos.l to 3

CORAM; A.M.KHANWILKAR J.

DATED l3.4.2006

P.C.

l. Heard parties. Admit. Mr. Dholakia i/b H M Mirashi waives service for respondent nos.l to 3. As short question is involved the appeal is taken up forthwith for final disposal by consent.

2. This appeal takes exception to the order passed by the City Civil Court Bombay dated 23.2.2006 in notice of motion no. 4773 of 2005 in S.C.Suit No. 998 of 2005. By the said notice

of motion the appellant- original plaintiff prayed that the order dismissing the suit dated 29.l0.2005 be set aside and instead restore the suit to file and be proceeded with in accordance with law. The order which was passed on 29. l0.2005 has been extracted in the impugned order in para l0 which reads thus:

"Advocate Mr.Santosh Singh for defendant is present. Plaintiff and his advocates absent.

On the last occasion it was pointed out to me that the N/M as well as the suit are infructuous as the plaintiff has been already dispossessed from the suit premises. Plaintiff has sought time to make an appropriate application. As no such application is forthcoming from the plaintiff till today, I take it that the suit has become infructuous, on the showing of the plaintiff on the last date that he was dispossessed. Hence, the suit will have to be dismissed. Suit is

dismissed as it has become infructuous and for want of prosecution, hence, removed from the board of this court. No order as to costs".

3. The appellant had filed the notice of motion for setting aside the above order. According to the appellant, the question of the suit becoming infructuous which is the only basis in dismissing the suit for non prosecution does not arise for the simple reason that the appellant intends to take out formal application for restoration - as the case of the appellant is that he has been forcibly dispossessed from the suit premises during the pendency of the suit. The appellant undertakes to file such an application within two weeks from today before the trial court.That assurance given by the appellant through his counsel is accepted. In the interest of justice, therefore, the impugned order is set aside and instead the notice of motion no.4773 of 2005 is made absolute on condition

that the appellant will prefer appropriate formal application as may be advised within two weeks from today, failing which the order passed on 29.l0.2005 to stand revived. Parties to appear before the trial court on 3.5.2006 when appropriate orders may be passed by the trial court, in the event the appellant files formal application in terms of the assurance given by him to this court within two weeks from today. The appeal is disposed of on the above terms. No order as to costs. All questions on merits are left open to be decided by the trial court at the final hearing.